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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

JAVAD N. SANI et al.,  
  
Plaintiffs and Appellants,

v.

THE PEOPLE ex rel.  
DEPARTMENT OF  
TRANSPORTATION,

Defendant and Respondent.

2d Civil No. B285759  
(Super. Ct. No. 14CVP0140)  
(San Luis Obispo County)

Javad Sani and Parvin Nahvi (collectively, the Sanis) appeal from the judgment after the trial court determined that the Department of Transportation (Caltrans) was not liable for the inverse condemnation of the Sanis' property. The court found that the Sanis' prior settlement with Caltrans barred their claims for the taking of easements once appurtenant to their property, and that Caltrans's postsettlement construction activities did not rise to the level of a taking. The Sanis contend: (1) the settlement expressly reserved their presettlement inverse

condemnation claims, (2) the court erroneously excluded evidence of the diminution in value of their property, and (3) the court erred when it found no inverse condemnation based on Caltrans's postsettlement construction activities.<sup>1</sup> We affirm.

#### FACTUAL AND PROCEDURAL HISTORY

In 1987, the Sanis purchased a 13.5-acre tract of oceanview property in San Simeon. The property lies east of the Pacific Coast Highway, just north of the Piedras Blancas Lighthouse.

Over the next 17 years, the Sanis built three single-family homes on three separate parcels of the property. 255 Via Piedras Blancas (Parcel 1) and 270 Via Piedras Blancas (Parcel 2) sat on the west side of the property, abutting the Pacific Coast Highway, while 295 Via Piedras Blancas (Parcel 3) sat on the eastern half of the property. Parcel 3 benefitted from five easements: a drainage easement that burdened Parcel 1; a well easement that burdened Parcel 2; and a driveway and utility easement, pedestrian and equestrian easement, and beach access easement that burdened both parcels.

The Sanis adopted covenants, conditions, and restrictions (CC&R's) to govern the use of the parcels. One section of the CC&R's states: "No [p]arcel, or any portion thereof, shall be occupied and used by the owners, their contract purchasers, lessees, tenants, or social guests[] for any purpose other than private[,] singl[e]-family residential purposes. . . . No

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<sup>1</sup> The Sanis also claim entitlement to severance damages. As we explain below, they have not established a compensable taking. Their claim for severance damages is therefore moot. (*San Diego Gas & Electric Co. v. Superior Court* (1996) 13 Cal.4th 893, 942 (*San Diego Gas & Electric Co.*).)

trade or business or commercial activity shall be carried on or conducted upon any [p]arcel.”

The Coastal Commission required the Sanis to adopt deed restrictions to develop the parcels. One of the restrictions requires the Sanis to “install and maintain . . . landscape screening in a manner that prevents the [parcels] from being visible from public view.”

In 2010, Caltrans recommended realignment of a section of the Pacific Coast Highway to help protect it from coastal erosion. The proposed Piedras Blancas Project (the Project) would elevate the highway and move it inland 475 feet. As proposed, the realigned highway would run through the home built on Parcel 1, and would bisect Parcel 2. The wells located on Parcel 2 would be on the seaward side of the highway after realignment. Parcel 3 would not be directly affected.

Caltrans filed an eminent domain complaint to condemn portions of Parcels 1 and 2. The complaint did not mention Parcel 3 or its easements. Caltrans took prejudgment possession of the parcels in March 2013. The order of possession did not refer to any of the easements appurtenant to Parcel 3.

The Sanis cross-complained. They alleged they were entitled to damages for the partial takings of Parcels 1 and 2 and for impacts from Project construction. They also alleged inverse condemnation because the Project would take or damage the easements appurtenant to Parcel 3.

The parties settled their dispute at mediation. Pursuant to the settlement, Caltrans acquired all of Parcels 1 and 2 in fee simple absolute, subject only to two new well easements across the parcels, a new driveway and utility easement, and a new encroachment permit for water and utility

conduits for the benefit of Parcel 3. The Sanis retained Parcel 3. Caltrans would use Parcels 1 and 2 for “state highway purposes.” It could “make any use” of the parcels that did not interfere with the new easements and encroachment permit benefitting Parcel 3.

Caltrans paid the Sanis \$6.44 million for its acquisition of Parcels 1 and 2, all damages related to the acquisition, and all precondemnation damages. The amount represented “full payment for [the Sanis’] interests in [Parcels 1 and 2] and for all damages of every kind and nature suffered or to be suffered by reason of the acquisition of said property and the construction and use of the Project.” The Sanis retained full ownership of Parcel 3, “alleged damages to . . . which [were] the subject of [their] cross-complaint.”

The settlement “fully and finally resolve[d]” Caltrans’s eminent domain complaint and the Sanis’ inverse condemnation cross-complaint. The latter was dismissed without prejudice. The Sanis retained the right to bring a “future claim in inverse condemnation for any alleged taking of or alleged diminution in value to [Parcel 3] arising out of the Project and construction of the Project,” but waived the right to bring “any future claim against [Caltrans] based on any action done or right granted pursuant to [the settlement].” Caltrans could invoke the settlement as a defense to any action “based on [its] terms and conditions.”

Four months later, the Sanis filed an inverse condemnation complaint against Caltrans. The Sanis alleged Caltrans took the drainage easement, well easement, driveway and utility easement, pedestrian and equestrian easement, and beach access easement that previously benefitted Parcel 3—the

same allegations asserted in their prior cross-complaint. The complaint also added new allegations based on Caltrans's postsettlement construction activities: that construction of the Project had or would substantially interfere with access to Parcel 3 and the utilities servicing it, degrade and devalue the parcel, and force it out of compliance with existing deed restrictions. The Sanis sought \$3.97 million in damages.

The trial court held a bench trial on the question of whether the Sanis established a compensable taking. At trial, Sani testified that Caltrans reduced the value of Parcel 3, took the easements appurtenant to it, diminished the parcel's views, created construction noise and dust, and briefly disrupted a waterline. An engineer testified that he anticipated diminished views from Parcel 3 due to the future installation of landscape screening required by the Sanis' deed restrictions.<sup>2</sup>

A Caltrans surveyor testified that the driveway and utility easement reserved in the settlement was in the same location as the analogous easement was prior to the Project. The well easements granted in the settlement were significantly larger than the pre-Project well easement. The Sanis retained full use and ownership of all new easements.

A Caltrans engineer testified that no construction activities occurred on Parcel 3. He said construction crews adhered to dust control practices. The realigned highway would remain lower than the home built on Parcel 3. Plant screening of the highway had yet to begin, but would be completed.

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<sup>2</sup> An appraiser also testified for the Sanis about the diminished valuation of Parcel 3, but the court struck his testimony.

The engineer also testified that Caltrans replaced the Sanis' well communication system after Parcel 3's water supply was briefly disrupted. There was no evidence that construction activities caused the disruption.

The trial court determined that the Sanis did not establish any compensable taking. The settlement resolved all disputes regarding the easements formerly appurtenant to Parcel 3 and any violation of the CC&R's. The "minor inconveniences" to the parcel during construction did not rise to the level of a taking. The potential violations of the Sanis' deed restrictions did not give rise to an inverse condemnation claim.

## DISCUSSION

### *Presettlement claims*

The Sanis first contend the trial court erred when it determined that the settlement bars their claims for the inverse condemnation of the easements that were appurtenant to Parcel 3 prior to the settlement. We disagree. The settlement unambiguously bars these claims.

The interpretation of a settlement agreement presents a question of contract interpretation for our independent review. (*Winet v. Price* (1992) 4 Cal.App.4th 1159, 1166.) Our goal is to give effect to the parties' mutual intent at the time of contracting (Civ. Code, § 1636), keeping in mind our responsibility to interpret the settlement to "make it lawful, operative, definite, reasonable, and capable of being carried into effect" (Civ. Code, § 1643). We ascertain the parties' intent from the settlement's terms alone if they are clear and explicit and do not lead to an absurd result. (Civ. Code, §§ 1638, 1639.) We give the settlement's terms their ordinary meanings unless the parties clearly intended to give them technical or special meanings. (Civ.

Code, § 1644.) We construe the settlement as a whole to give effect to every part. (Civ. Code, § 1641.)

The unambiguous terms of the settlement preclude the Sanis' claims for the taking of the five easements originally appurtenant to Parcel 3. "[O]wnership of real property in fee simple absolute is the greatest possible estate." (*Apartment Assn. of Los Angeles County, Inc. v. City of Los Angeles* (2001) 24 Cal.4th 830, 841, fn. 3.) The conveyance of property in fee simple absolute extinguishes all interests the seller may have possessed in the property, including easements. (*Taylor v. Avila* (1917) 175 Cal. 203, 206; see Civ. Code, § 811.) If the seller reserves an interest in the property, the entire fee is transferred to the buyer, and a new interest is granted back to the seller. (*City of Manhattan Beach v. Superior Court* (1996) 13 Cal.4th 232, 244.)

Pursuant to the settlement, Caltrans acquired all of Parcels 1 and 2 in fee simple absolute, subject only to the Sanis' reservation of two new well easements, a new driveway and utility easement, and a new water and utility encroachment permit. The Sanis' conveyance of the parcels in fee simple absolute extinguished all other interests they had in the parcels, including the five original easements. There can be no inverse condemnation of property interests that no longer exist.

Additional terms of the settlement reinforce our conclusion. The settlement specified that the Sanis retained no interest in Parcels 1 and 2 other than the reserved well easements, driveway and utility easement, and water and utility encroachment permit. It specified that Caltrans's payment of \$6.44 million was for its acquisition of Parcels 1 and 2, "any and all damages" related to that acquisition, and all precondemnation damages. That amount represented the "full payment" for the

Sanis' interests in Parcels 1 and 2 and for "all damages of every kind and nature suffered or to be suffered by reason of the acquisition." The settlement "fully and finally resolve[d]" the Sanis' inverse condemnation cross-complaint, the foundation of which was the taking of Parcels 1 and 2 and the five easements appurtenant to Parcel 3. Read as a whole, the settlement evidences the parties' intent to resolve the Sanis' inverse condemnation claims.

The Sanis counter that this result ignores the settlement's dismissal of their cross-complaint "without prejudice." (See *Eaton Hydraulics Inc. v. Continental Casualty Co.* (2005) 132 Cal.App.4th 966, 974, fn. 6 ["A dismissal 'without prejudice' necessarily means without prejudice to the filing of a new action on the same allegations . . . ."].) While we agree generally that a dismissal without prejudice permits a party to file an action identical to the original, such a dismissal may be conditioned on the party performing a certain act. (See, e.g., *Kurwa v. Kislinger* (2013) 57 Cal.4th 1097, 1102-1105 [dismissals without prejudice conditioned on waiver of statute of limitations]; *Mon Chong Loong Trading Corp. v. Superior Court* (2013) 218 Cal.App.4th 87, 94 [dismissal conditioned on payment of costs].) Indeed, as the Sanis themselves recognize, "[t]he parties to a settlement may, by their agreement, limit the application of . . . a dismissal." (*American Bankers Ins. Co. v. Avco-Lycoming Division* (1979) 97 Cal.App.3d 732, 737.)

Here, the settlement permits the Sanis to dismiss their inverse condemnation cross-complaint without prejudice, and allows them to bring a new inverse condemnation claim for any taking that arises out of the Project or its construction. But it conditions those rights on the Sanis' waiver of "any future



claim . . . based on any action done or right granted pursuant to” the settlement. That includes the resolution of their inverse condemnation cross-complaint for the loss of the easements formerly appurtenant to Parcel 3.

Interpreting the dismissal of the Sanis’ cross-complaint without prejudice as conditional, rather than absolute, does not render the phrase “without prejudice” nugatory or inoperative, as the Sanis claim. (*Founding Members of the Newport Beach Country Club v. Newport Beach Country Club, Inc.* (2003) 109 Cal.App.4th 944, 957.) Rather, it reads that phrase in the context of the entire settlement. (Civ. Code, § 1641.) It also avoids the absurd result of permitting the Sanis to bring new claims identical to those the settlement “fully and finally” resolved. (Civ. Code, § 1638.)

None of the cases on which the Sanis rely holds otherwise. In each of those cases, the dismissals without prejudice were not conditioned on the party performing a certain act. (See *Wells v. Marina City Properties, Inc.* (1981) 29 Cal.3d 781, 784; *Cardiff Equities, Inc. v. Superior Court* (2008) 166 Cal.App.4th 1541, 1546; *Syufy Enterprises v. City of Oakland* (2002) 104 Cal.App.4th 869, 879; *Troche v. Daley* (1990) 217 Cal.App.3d 403, 406.) Here, in contrast, the parties agreed to the Sanis’ dismissal of their cross-complaint without prejudice in return for their agreement to waive any future claim regarding the easements formerly appurtenant to Parcel 3.

The Sanis next claim the trial court interpreted the settlement in a way that limits the universe of permissible claims to unforeseen future takings, which, in their view, rendered the settlement’s “without prejudice” language surplusage because they already had the right to bring a claim for such a taking.

(See *Metropolitan Water Dist. of So. California v. Campus Crusade for Christ, Inc.* (2007) 41 Cal.4th 954, 975 [property owner may maintain action based on injuries suffered during construction].) But the court did not find that only unforeseen claims are actionable under the settlement; it expressly did not “reach the entire category of potential foreseeable claims.” Even if it had, “[a] contract term . . . is not surplusage merely because it confers a right already guaranteed by [law].” (*Boghos v. Certain Underwriters at Lloyd’s of London* (2005) 36 Cal.4th 495, 504 (*Boghos*).)

The Sanis also claim the settlement’s specific provisions giving them the right to bring a claim for any taking of Parcel 3 are paramount to the general provisions showing they were compensated for their inverse condemnation claims. (*Prouty v. Gores Technology Group* (2004) 121 Cal.App.4th 1225, 1235; see Civ. Code, § 3534; Code Civ. Proc., § 1859.) But that rule “applies only when the provisions in question are truly inconsistent.” (*Boghos, supra*, 36 Cal.4th at p. 504.) The settlement terms are not. The specific provision permitting the Sanis to bring an inverse condemnation claim for any alleged taking of Parcel 3 is followed by a provision limiting that claim to one not based on “any action done or right granted pursuant to the [settlement].” Read together, these provisions permit the Sanis to file a claim for any taking of Parcel 3, no matter when it occurred or will occur, so long as it is not based on Caltrans’s acquisition of Parcels 1 and 2. That is fully consistent with the settlement’s general provisions stating that Caltrans has “fully and finally” compensated the Sanis for their interests in Parcels 1 and 2.

The Sanis next argue the trial court should have considered extrinsic evidence to determine their intent at the time they entered into the settlement. (See Civ. Code, § 1647 [settlement may be explained by “reference to the circumstances under which it was made”].) The court properly rejected this request. (*Abers v. Rounsavell* (2010) 189 Cal.App.4th 348, 357 (*Abers*) [appellate court independently reviews whether to use extrinsic evidence to interpret a settlement].) “Evidence of the circumstances under which an unambiguous [settlement] was made is inadmissible to add to or take away from a writing notwithstanding section 1647 of the Civil Code.” (*Budget Way Cleaners & Laundry, Inc. v. Simon* (1957) 151 Cal.App.2d 476, 480.) “The agreement is the writing itself” (*Cerritos Valley Bank v. Stirling* (2000) 81 Cal.App.4th 1108, 1116), and our role is to determine the parties’ intent as expressed in the settlement: “what was intended by what was said—not what a party intended to say” (*Los Angeles City Employees Union v. City of El Monte* (1985) 177 Cal.App.3d 615, 622).

Here, the unambiguous terms of the settlement show the parties’ intent to resolve the Sanis’ inverse condemnation claims and to bar those claims in a future action. Simply because the Sanis disagree with that interpretation does not render the settlement terms ambiguous. (*Abers, supra*, 189 Cal.App.4th at p. 356.) The trial court properly interpreted the settlement without reference to extrinsic evidence. (*Nish Noroian Farms v. Agricultural Labor Relations Bd.* (1984) 35 Cal.3d 726, 735.)

Alternatively, the Sanis claim the taking of the easements formerly appurtenant to Parcel 3 occurred not through the settlement but through Caltrans’s prejudgment possession of portions of Parcels 1 and 2. Accordingly, the claims in their

inverse condemnation complaint are not “based on any action done or right granted pursuant to” the settlement, and are not barred by its terms.

We agree that Caltrans’s prejudgment possession of Parcels 1 and 2 likely constituted takings of the Sanis’ easements. (See *Redevelopment Agency v. Gilmore* (1985) 38 Cal.3d 790, 800-801.) The takings themselves thus were not “action[s] done” pursuant to the settlement. But the Sanis alleged those takings in their inverse condemnation cross-complaint. The settlement “fully and finally” resolved the cross-complaint. That resolution was, of course, an “action done” pursuant to the settlement. Because the claims in the Sanis’ inverse condemnation complaint are, as the Sanis concede, identical to those in the now-resolved cross-complaint, they are barred as an “action done or right granted” pursuant to the settlement. (Cf. *Consumer Advocacy Group, Inc. v. ExxonMobil Corp.* (2008) 168 Cal.App.4th 675, 685-686 [discussing preclusive effects of settlements].)

*Evidence of diminution in value*

The Sanis contend the trial court erred when it excluded evidence of the diminished value of Parcel 3 because the settlement expressly permits them to bring a claim based on any “alleged diminution in value to [the parcel].” We again disagree.

“Relevant evidence” is evidence that has “any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of [an] action.” (Evid. Code, § 210.) Such evidence must “logically, naturally, and by reasonable inference” tend to prove a material fact. (*People v. Daniels* (1991) 52 Cal.3d 815, 856.) If it does not, it is inadmissible. (Evid. Code, § 350.) We review the trial court’s

decision to exclude evidence on the grounds of relevance for abuse of discretion. (*People v. Mickel* (2016) 2 Cal.5th 181, 219.)

There was no abuse of discretion here. “[I]n an inverse condemnation action, the property owner must first clear the hurdle of establishing that the public entity has, in fact, taken or damaged [their] property before [they] can reach the issue of ‘just compensation.’” [Citation.]” (*San Diego Gas & Electric Co.*, *supra*, 13 Cal.4th at p. 940, original alterations omitted.) “Neither the mere existence of a public use or a diminution in the value of the plaintiff’s property establishes a compensable taking or damaging of the property.” (*Boxer v. City of Beverly Hills* (2016) 246 Cal.App.4th 1212, 1218 (*Boxer*)). “Rather, a diminution in value of the plaintiff’s property is ‘an element of the measure of just compensation when such taking or damaging is otherwise proved.’ [Citation.]” (*Ibid.*)

Here, the settlement permits the Sanis to bring an inverse condemnation claim based on an alleged diminution in value to Parcel 3. But that right hinges on whether they established that Caltrans took or damaged their property. As set forth above, the Sanis cannot establish a taking based on Caltrans’s presettlement actions. And as we explain below, they have not established a taking based on Caltrans’s postsettlement construction. Evidence of alleged diminution in value to Parcel 3 was therefore irrelevant. The trial court properly excluded it.

#### *Postsettlement construction activities*

The Sanis contend the trial court erred when it determined that they failed to establish takings based on postsettlement construction activities. We are not persuaded.

At trial, the Sanis bore the burden of proving that Caltrans’s construction activities constituted a taking of their

property. (*Bookout v. State of California ex rel. Dept. of Transportation* (2010) 186 Cal.App.4th 1478, 1486.) Whether they successfully met that burden presents a mixed question of law and fact. (*Shaw v. County of Santa Cruz* (2008) 170 Cal.App.4th 229, 269.) We independently review whether the trial court selected the applicable legal principles and correctly applied them to the facts of the case. (*Id.* at p. 270.) But our factual review is limited to “whether the evidence compels a finding in [the Sanis’] favor . . . as a matter of law.” (*In re I.W.* (2009) 180 Cal.App.4th 1517, 1528.) Specifically, we review whether the “evidence was (1) ‘uncontradicted and unimpeached’ and (2) ‘of such a character and weight as to leave no room for a judicial determination that it was insufficient to support a finding.’ [Citation.]” (*Ibid.*) Showing that the evidence compels a judgment in the Sanis’ favor is “almost impossible.” (*Bookout*, at p. 1486.) Unless the trial court made specific findings to the contrary, we presume it found that the Sanis’ evidence lacked sufficient weight and credibility to carry their burden. (*Ibid.*)

#### *1. Highway and field office*

The Sanis first claim they are entitled to compensation because Caltrans’s construction of a highway across Parcels 1 and 2 and its use of the house on Parcel 2 as a field office violate the CC&R’s. (See *Southern Cal. Edison Co. v. Bourgerie* (1973) 9 Cal.3d 169, 172-175 [condemner must compensate landowner damaged by violation of CC&R’s].) Assuming the Sanis had a compensable interest under *Bourgerie* (see *San Jose Parking, Inc. v. Superior Court* (2003) 110 Cal.App.4th 1321, 1327 [not all building restrictions give rise to a property interest under *Bourgerie*]), they waived that interest in the settlement.

In the settlement, the Sanis acknowledged that Caltrans was going to use Parcels 1 and 2 for “state highway purposes.” They agreed that Caltrans had “the right to make any use” of the parcels so long as that use did not interfere with their newly granted easements. They also waived the right to bring a claim “based on any action done or right granted pursuant to [the settlement].” Caltrans’s construction of a highway and use of the house as a field office qualify as “any use” of the parcels. They were thus rights granted pursuant to the settlement. The Sanis cannot bring claims based on those actions.

Even if they could, Caltrans has already compensated the Sanis for any taking related to the CC&R’s. Caltrans paid the Sanis \$6.44 million for Parcels 1 and 2. That represented the “full payment . . . for all damages of every kind and nature suffered or to be suffered by reason of the acquisition of [the parcels] and the construction and use of the Project.” Because construction of a highway and use of a house as a field office are damages due to the construction of the Project, Caltrans has complied with any payment obligations required by *Bourgerie*.

## *2. Substantial interference*

The Sanis next claim they are entitled to damages because Caltrans’s construction activities substantially interfered with their use of Parcel 3. (See *San Diego Gas & Electric Co.*, *supra*, 13 Cal.4th at p. 940.) Specifically, they claim they are entitled to damages due to: (1) a decline in rental income, (2) a disruption to Parcel 3’s water supply, (3) construction noise and dust, and (4) reductions in the parcel’s view. As to the first of these claims, reduced property value is a measure of damages; it does not establish a compensable taking. (*Ibid.*; *Boxer, supra*, 246 Cal.App.4th at p. 1218.) As to the latter three claims, the

trial court deemed these as “minor inconveniences.” “Temporary injury resulting from actual construction of public improvements is generally noncompensable.” (*People ex rel. Department of Public Works v. Ayon* (1960) 54 Cal.2d 217, 228.) “Personal inconvenience, annoyance[,] or discomfort in the use of property are not actionable types of injuries.” (*Ibid.*)

Moreover, the only evidence the Sanis cite in support of their claim is Sani’s testimony at trial. A Caltrans engineer contradicted his testimony. The engineer testified that there was no evidence that construction activities caused the disruption to the Sanis’ water supply. (*Souza v. Silver Development Co.* (1985) 164 Cal.App.3d 165, 172 [proof of causation required for inverse condemnation liability].) He testified that Caltrans performed no construction on Parcel 3 and adhered to best practices for dust control. (*Boxer, supra*, 246 Cal.App.4th at p. 1224 [noise and dust must be “overpowering” to give rise to inverse condemnation claim].) And he testified that the reconstructed highway would remain lower than the house constructed on Parcel 3. (*Regency Outdoor Advertising, Inc. v. City of Los Angeles* (2006) 39 Cal.4th 507, 520 [changes to views do not give rise to an inverse condemnation claim]; *Oliver v. AT&T Wireless Services* (1999) 76 Cal.App.4th 521, 525 [same].) The Sanis’ evidence of substantial interference with Parcel 3 was thus neither uncontradicted and unimpeached nor of such weight that it compelled a finding in their favor. (*In re I.W., supra*, 180 Cal.App.4th at p. 1528.)

### *3. Deed restrictions*

Finally, the Sanis claim Caltrans’s construction activities forced them out of compliance with one of the deed restrictions imposed by the Coastal Commission. But there was no evidence that the Coastal Commission ever threatened to



enforce the restriction. And an engineer testified that Caltrans would provide screening to obstruct the view of the home built on Parcel 3 from the highway, bringing the Sanis into compliance with the deed restriction.

Moreover, the only evidence of the “violation” of the deed restriction was an expert who testified about changes in views *from Parcel 3*. The restriction limits the visibility of the parcel *from the highway*. The Sanis thus have not carried their “almost impossible” burden of showing that the evidence compels a finding in their favor.

#### DISPOSITION

The judgment is affirmed. Caltrans shall recover its costs on appeal.

NOT TO BE PUBLISHED.

TANGEMAN, J.

We concur:

GILBERT, P. J.

YEGAN, J.

Donald G. Umhofer and Roger T. Picquet, Judges

Superior Court County of San Luis Obispo

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